

Philippines-Australia Land Administration and Management Project

FREE PATENT AMENDMENT BILL REPORT

September 2004

REPORT A14



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Matters for Consideration for Inclusion in a Draft DENR-DOJ-DAR-BIR Circular

Resources used in preparation of above documents

List of Participants at Stakeholder Review of Proposed Free Patent Amendments Workshop, conducted 17 August 2004 at One Stop Shop, PIO 1, Leyte.

Other Authorities consulted in preparation of above documents

Opinions of Atty. Ramon Casanova adviser to PA LAMP:

- September 10, 2004 on Sections 1, 3 and 6 of the draft Free Patent Bill;
- August 30, 2004 on various sections of the draft Free Patent Bill;
- July 21, 2004 on Cadastral lost in free patent applications, and on the qualification of a free patent beneficiary
- June 10, 2004 on Joint DENR-DAR Circular No. 2003-01, Series of 1097. The content of the circular is challenged on a number of fundamental legal grounds.

FREE PATENT AMENDMENT BILL REPORT

INTRODUCTION

Since the last free patent amendment was signed into law in late 2002, the DENR has been developing and field testing improved free patent procedures. A number of major limitations in the law were identified and a report on matters which ought to be included in the new free patent amendment were compiled in early 2003. This was followed by confirmation by the LAMP Supervision Mission in February 2003 of the issues to be addressed in the Bill. Subsequently, a draft Bill was completed in July 2003.

During review of the draft Bill a number of issues emerged based on the field experience of LAMP. As a result, three studies were designed and implemented in 2004. These studies were completed in July 2004. The studies are;

- a) Participation study, to determine the reasons some people participate and others do not participate in systematic titling in rural areas;
- b) Mortgage study, to understand the informal practices which occur in rural areas and how best to process land titling applications in respect to mortgaged properties;
- c) Tenancy study, to understand the long standing practices, the legal requirements of agrarian reform laws, the opportunities for providing tenure security to both owners and lessees / tenants, and how the law and / or titling / lease practices of Government (DAR, DENR) should be modified;

In addition, legal opinions and expert discussions have been canvassed on:

- a) Joint DAR-DENR Agreement on Land Titling;
- b) Fees and Documentary requirements;
- c) Back taxes.

Further, the experiences of LAMP PIO1 in Leyte have been compiled into a lessons and methodology report which provides guidance on obstacles and solutions to land titling. Workshops with stakeholders in Leyte were conducted on the draft Bill, as well as on each of the three above studies. The Bill has been amended to take into account the outcomes of the workshops and consultations with eminent persons.

This document contains a compilation of papers summarizing the results of the process of drafting the Bill. The purpose of this report is to produce a draft Bill and accompanying explanatory note on free patent titling, which will better support the issuing of land titles under the LAMP program and in DENR normal operations as well as a list of those matters which ought to be addressed in a DAO, which would be issued ahead of the passing of the Bill (which may take over one year), and which would assist to make clear and complete the key requirements for free patent titling. The intention is that such a Bill will not only directly benefit the future LAMP 2 project, but also will benefit all DENR free patents titling work.

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Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINTH CONGRESS
NTH REGULAR SESSION

INTRODUCED BY:

AN ACT TO AMEND

(i) SECTIONS 44, 45, 47, 48, 107, 119, 129, 130, 131, 132, 133 OF COMMONWEALTH

ACT NO. 141, OTHERWISE KNOWN AS THE

PUBLIC LAND ACT;

(ii) PRESIDENTIAL DECREE 152; and

(iii) PRESIDENTIAL DECREE 1529, OTHERWISE KNOWN AS THE
PROPERTY REGISTRATION DECREE

Be it enacted by the Senate and House of representatives of the Philippines in Congress assembled.

PART I

Section 1. – Paragraph 1, Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended, is hereby further amended to read as follows:

“**Section 44 (1).** – Any natural born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who for at least ten (10) years prior to his/her filing of application for patent, has continuously possessed, either by himself/herself or through his/her predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition shall be entitled, under the provisions of this chapter, to have a free patent issued to him/her for such tract or tracts of such land not to exceed twelve (12) hectares, inclusive of his/her currently owned agricultural lands; Provided: That if there are tenants, share croppers, regular or seasonal farm workers on the land, the issuance of a free patent to the applicant shall be without prejudice to their rights under existing land reform laws; Provided further that if the land applied for is within ancestral domain land, the same shall be issued pursuant to the provisions of Republic Act 8371, Indigenous Peoples Rights Act.

Free patents based on possession ten years before the commencement of this Act can be approved from the date of effectivity of this Section.”

Section 2. – Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended, is hereby further amended by the addition of the following paragraph:

“ **Section 44 (2).**- The provisions of any law to the contrary notwithstanding, any natural born citizen of the Philippines who is not the owner of any tract of land and who for at least ten (10) years prior to his/her application for patent, has continuously possessed either by himself/herself or through his/her predecessors-in-interest, a tract of land of the

49 public domain subject to disposition for residential, commercial or industrial purposes,
50 shall also be entitled, under the provisions of this chapter, to have a free patent issued to
51 him/her for such tract of land.

52
53 Patents based on possession ten years before the commencement of this Act can be
54 approved from the date of effectivity of this Section.”

55
56 **Section 3.** – Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended,
57 is hereby further amended by the addition of the following paragraph:

58
59 “**Section 44 (3).** - Those who have continuously possessed a tract of land as
60 described in Section 44 (1) and 44 (2) for at least three (3) years and have otherwise
61 satisfied the requirements of that section prior to the effectivity of this Act shall be entitled
62 to have a certificate of possession/provisional free patent issued to him/her for such tract
63 of land but which shall not be subject to encumbrance or alienation until such time that the
64 beneficiary shall have completed ten (10) years of continuous possession over said tract of
65 land, whereupon he/she shall be issued a free patent for such tract of land.”

66
67 **Section 4.** – Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended,
68 is hereby further amended by the addition of the following paragraph:

69
70 “**Section 44 (4).** -Land acquired by free patent under the provisions of this chapter
71 shall be treated as any other private land with all the concomitant rights thereunto
72 appertaining and shall not be subject to the restrictions of, nor shall it enjoy the exemption
73 from being held in satisfaction of any debt, as heretofore provided in Section 118 and
74 Sections 121, 122, 123 and 124 of Commonwealth Act No. 141.

75
76 This applies to patents issued before or after the date of effectivity of this Section.”

77
78 **Section 5.** – Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended,
79 is hereby further amended by the addition of the following paragraph:

80
81 “**Section 44 (5).**-Any encumbrance creating an interest in land that has been entered into
82 before the land is acquired by free patent, which aside from the question of the status of
83 the land would be sufficient in law for purposes of registration, and which remains in
84 existence at the time of the grant of free patent, shall be preserved and may be recorded on
85 the patent as an encumbrance at the time the patent is issued. Provided: That the contract
86 creating the encumbrance shall not be contrary to law, good morals, public order or public
87 policy.”

88
89 **Section 6.** – Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended,
90 is hereby further amended by the addition of the following paragraph:

91
92 “**Section 44 (6).**- For the purposes of this Act, it is sufficient that the land applied
93 for shall have been classified as alienable and disposable/agricultural at the time of the
94 filing of application; Provided: That areas that are unclassified land, but are already built-
95 up or with settlers shall be deemed classified as alienable and disposable/agricultural by
96 virtue of this Act.”

97
98 **Section 7.** – Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended,
99 is hereby further amended by the addition of the following paragraph:

100
101 “Section 44 (7).- Nothing in this Section shall prevent the Government of the Philippines
102 and its public corporations and instrumentalities from applying for a free patent for
103 government land.”
104

105 **Section 8.** – Section 44, Chapter VII, Title II of Commonwealth Act No. 141, as amended,
106 is hereby further amended by the addition of the following paragraph:
107

108 “Section 44 (8).- Nothing in R.A. 6657 shall prevent the issue and registration of a free
109 patent for land parcels up to twelve (12) hectares in area.”
110

111 **Section 9.** – Section 45, Chapter VII, Title II of Commonwealth Act No. 141 is hereby
112 repealed.
113

114 **Section 10.** – Section 47, Chapter VIII, Title II of Commonwealth Act No. 141 is hereby
115 repealed.
116

117 **Section 11.** – Section 48, Chapter VIII, Title II of Commonwealth Act No. 141, as
118 amended, is hereby further amended by the addition of the following paragraph:
119

120 “(d) Nothing in this provision shall be taken to preclude those in occupation of
121 lands in the public domain from seeking administrative confirmation of their title.”
122

123 **Section 12.** – Section 107, Chapter XIV, Title VI of Commonwealth Act No. 141, as
124 amended, is hereby further amended to read as follows:
125

126 "Sec. 107. All patents or certificates for land granted under this Act shall be issued in the
127 name of the Government of the Republic of the Philippines under the signature of the
128 President of the Philippines: Provided, however, That the Secretary of Environment and
129 Natural Resources may sign patents in lieu of the President: Provided, further, that the
130 Secretary of Environment and Natural Resources may delegate the power to sign patents or
131 certificates: Provided, That no applicant shall be permitted to split the area applied for by him
132 in excess of the area fixed in this section among his relatives within the sixth degree of
133 consanguinity or affinity excepting the applicants married children who are actually
134 occupying the land. No patents or certificate shall be issued by the Community and
135 Environment Natural Resources Officer unless the survey of the land covered by such patent
136 or certificate, whether made by the Bureau of Lands or by a private surveyor, has been
137 approved. The Department of Environment and Natural Resources shall promptly act upon all
138 surveys submitted for approval and return the same to the Community and Environment
139 Natural Resources Officer within ninety days after receipt of such surveys by his office. In
140 case of disapproval, the Department of Environment and Natural Resources shall state the
141 reasons therefor. Any person aggrieved by the decision or action of the Community and
142 Environment Natural Resources Officer may, within thirty days from receipt of the copy of
143 the said decision, appeal to the Department of Environment and Natural Resources. Such
144 patents or certificates shall be effective only for the purposes defined in section one hundred
145 and twenty-two of the Land Registration Act, and actual conveyance of the land shall be
146 effected only as provided in said section.

147
148 "All surveys pending approval by the Department of Environment and Natural Resources
149 at the time this Act takes effect shall be acted upon by him within ninety days from the
150 effectivity of this Act.

151
152 This amendment shall apply to all patent applications that are approved and awaiting
153 signature at the date of effectivity of this Section and to applications lodged after that
154 date.”

155
156 **Section 13.** – Section 119, Chapter XIV, Title VI of Commonwealth Act No. 141, is
157 hereby repealed:

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159 **Section 14.** – Section 129, Chapter XVI, Title VI of Commonwealth Act No. 141, as
160 amended, is hereby further amended to read as follows:

161
162 “**Section 129.** Any person who presents or causes to be presented, or cooperates in
163 the presentation of any false application, declaration, or evidence, or makes or causes to be
164 made or cooperates in the making of a false affidavit in support of any petition, claim, or
165 objection respecting lands of the public domain, shall be deemed guilty of perjury and
166 punished accordingly. If the offender is a public official or government official/employee,
167 he/she shall be, in addition, removed from the office, forfeit all retirement benefits, except
168 for accumulated leave credits and be perpetually disqualified from holding any elective or
169 appointive public office.”

170
171 **Section 15.** – Section 130, Chapter XVI, Title VI of Commonwealth Act No. 141, as
172 amended, is hereby further amended to read as follows:

173
174 “**Section 130.** – Any person who voluntarily and maliciously prevents or hinders or
175 attempts to prevent or hinder the presentation of any application for public land under this
176 Act, or who in any manner attempts to execute or executes acts intended to dissuade or
177 discourage, or aid to dissuade or discourage, the acquisition of public lands, shall be
178 deemed guilty of coercion and be punished accordingly. If the offender is a public official
179 or government official/employee, he/she shall be, in addition, removed from the office,
180 forfeit all retirement benefits, except for accumulated leave credits and be perpetually
181 disqualified from holding any elective or appointive public office.”

182
183 **Section 16.** – Section 131, Chapter XVI, Title VI of Commonwealth Act No. 141, as
184 amended, is hereby further amended to read as follows:

185
186 “**Section 131.** – Any person who sells forms issued and distributed gratuitously
187 under this Act or who, being an officer charged with distributing them refuses or fails
188 without sufficient reason, to furnish the same, shall be punished for each offense by a fine
189 of not less than fifty thousand pesos (P50,000) and not more than one million pesos
190 (P1,000,000) or imprisonment of not more than one year, or both, in the discretion of
191 the court. If the offender is a public official or government official/employee, he/she shall
192 be, in addition, removed from the office, forfeit all retirement benefits, except for
193 accumulated leave credits and be perpetually disqualified from holding any elective or
194 appointive public office.”

195
196 **Section 17.** – Section 132, Chapter XVI, Title VI of Commonwealth Act No. 141, as
197 amended, is hereby further amended to read as follows:

198
199 “**Section 132.** – Any person, corporation, association or partnership which, not
200 being qualified or no longer authorized to apply for public land under the provision of this
201 Act, files or induces or knowingly permits another person, corporation, association or

202 partnership to file an application in his/her or its behalf or for his/her or its interest, benefit
203 or advantage, shall be punished by a fine of not less than 10% of the value of the land
204 applied for, based on the zonal value or fair market value as determined by the concerned
205 local government unit, whichever is higher or by imprisonment for not less than two (2)
206 years nor more than twelve (12) years, or both, in the discretion of the court; and the
207 application shall be cancelled; Provided: That in case the offender is a corporation,
208 association or partnership their responsible officials shall be deemed jointly and severally
209 liable; Provided further: That in case the offender is a public official or government
210 official/employee, he/she shall be, in addition, removed from the office, forfeit all
211 retirement benefits, except for accumulated leave credits and be perpetually disqualified
212 from holding any elective or appointive public office.”

213
214 **Section 18.** – Section 133, Chapter XVI, Title VI of Commonwealth Act No. 141, as
215 amended, is hereby further amended to read as follows:

216
217 “**Section 133.** – Any person who, without having the qualifications required by this
218 Act, shall by deceit or fraud acquire or attempt to acquire lands of the public domain or
219 other real property or any right, title or interest, or property right of any class to the same,
220 and any person aiding and abetting him therein or serving as a means or tool thereof, shall,
221 upon conviction, be punished by a fine of not less than 10% of the value of the land
222 applied for, based on the zonal value or fair market value as determined by the concerned
223 local government unit, whichever is higher, or by imprisonment for not less than two (2)
224 years nor more than (twelve) years, or both, in the discretion of the court. If the offender is
225 a public official or government official/employee, he/she shall be, in addition, removed
226 from the office, forfeit all retirement benefits, except for accumulated leave credits and be
227 perpetually disqualified from holding any elective or appointive public office.”

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229 PART II

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231 **Section 19.** – Presidential Decree No. 152 is hereby amended by the addition of the
232 following paragraph:

233
234 “Providing that this Decree does not, and was never intended to, apply to land grants under the
235 free patent provisions of the Public Land Act”

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237 PART III

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239 **Section 20.** – Section 93 of Presidential Decree 1529 as amended, is hereby further
240 amended by the addition of the following paragraph:

241
242 “Providing that the fee prescribed by this Section shall not apply to land grants under the free
243 patent provisions of the Public Land Act.”

244
245 **Section 21.** – Section 111 of Presidential Decree 1529 as amended, is hereby further
246 amended by the addition of the following paragraph:

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248 “Providing that the fees prescribed by this Section shall not apply to land grants under the
249 free patent provisions of the Public Land Act.”

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PART IV

Section 22. – The penal provisions apply to acts committed after the date of effectivity of this Section.

Section 23. – The Department of Environment and Natural Resources may adopt such mapping and surveying technologies as it sees fit in order to expedite the issuance of free patents. The Department also has the authority to determine the format and style of the technical description of the land as it appears on the free patent and title issued subsequent thereto.

Section 24. – All pending applications filed before the effectivity of this Act shall be treated as having been filed in accordance with the provisions of this Act.

Section 25. - No fees shall henceforth be payable for the preparation, issue and registration of land grants under the free patent provisions of the Public Land Act.

Section 26. - All laws, decrees, executive orders, executive issuances or letters of instructions, rules and regulations, or any part thereof, inconsistent or contrary to the provisions of this Act are hereby deemed repealed, amended or modified accordingly.

Section 27. - If any provision of this Act or the applicability of such provision to any person or circumstances shall be held invalid, the validity of the remainder of this Act and the applicability of such provision to the person or circumstances shall not be affected thereby.

Section 28. – This Act shall take effect fifteen days after its publication in two (2) newspapers of general Circulation.

Approved: _____
Date :

A BILL TO AMEND SECTIONS 44, 45, 47, 48, 107, 119, 129, 130, 131, 132, 133 OF
COMMONWEALTH ACT NO. 141, OTHERWISE KNOWN AS THE
PUBLIC LAND ACT, PRESIDENTIAL DECREE NO. 152, AND PRESIDENTIAL
DECREE 1529.

EXPLANATORY NOTE

PART I

INTRODUCTION

C.A. No 141, otherwise known as the Public Land Act, is the General Law governing the classification, delimitation, survey and disposition of alienable lands of the public domain. One of the modes of acquiring public lands under this law is by administrative legalization of imperfect title- more popularly known as Free Patent. Historically, it was intended to legalize the undocumented private land rights of native born Filipinos who were found to be occupying and cultivating such lands for a certain period.

The PA-LAMP is a strategic GOP initiative which aims to support an efficient land market and alleviate the present low level of confidence in the system of formal land registration and the lack of tenure security. Through its operations in Prototype 1 it has assisted in the development, training, testing and documenting of procedures and methods for land titling and one stop shop operations. Since the free patent amendment was first signed into law in late 2002, the PIO1 has been developing and field testing improved free patent procedures. A number of major limitations in the law have been identified which impact on the issue of free patents and the rights of the grantee of the free patent after its issue.

The amendments contained in this Bill have been drafted to reflect the realities on the ground. They will remove outdated and obsolete provisions and will facilitate the mass titling of land in the Philippines.

SECTION 1

Section 1 of the Bill amends Section 44 of C.A 141 by:

- reducing the period of occupation and cultivation from 30 years prior to the effectivity of R.A. 6940, being April 15 1960, to 10 years;
- providing for the issue of free patents without payment of outstanding taxes;
- clarifying that if the land is tenanted, then the landlord shall have the right to a free patent, but the issue of a patent thereto shall be without prejudice to the rights of the tenant beneficiary;
- changing the basis for eligibility for issue of a grant from “occupation and cultivation” to “possession”; and
- confirming that the total area of agricultural lands that an eligible person may hold is not more than twelve (12) hectares.

Reduction of possession period to 10 years

The current period is too long and unrealistic and creates difficulty in proving claims. Past free patent laws required a lesser period. Act 926 of 1903, required possession only since August 1, 1890 – or thirteen (13) years. Act 2874 of 1919 required possession since July 4, 1907, twelve (12) years. C.A. No. 141 originally required possession since July 4, 1926, or ten (10) years. R.A. No. 782 of July 21, 1952, required possession since July 4, 1945, or only seven (7) years. Under the Civil Code, ownership of land can be acquired by adverse possession or acquisitive prescription. With good faith and a just title, possession of the land under conditions laid down by law ripens into ownership after the lapse of ten (10) years, through ordinary prescription.

The free patent law is amended by shortening the period of occupancy to ten (10) years, following the period required for ordinary acquisitive prescription under the Civil Code.

Issuing of free patents without the payment of outstanding taxes

Under the original provisions of Section 44 of the Public Land Act, a natural born Filipino citizen was entitled to a free patent grant over a piece of agricultural land subject to disposition who, among others, has continuously occupied and cultivated the land or who shall have paid the real estate tax thereon while the same has not been occupied by any other person. In other words, payment of real estate taxes was by law an alternative to occupation and cultivation. This provision was embodied in Act 926 of 1903 (the first Public Land Act passed under the Philippine Bill of 1902), Act No. 2874 of 1919 (the second Public Land Act passed under the Jones Law of 1916) and in CA No. 141 of 1936 (the third and present Public Land Act passed under the 1935 Constitution).

In 1990, R.A. 6940 was passed by Congress extending the period to file free patent applications up to December 31, 2000, but it also amended Section 44 of the Public Land Act by deleting the word “or” and placing a comma instead, thus requiring the payment of taxes as an additional requirement for a free patent grant. It is unclear if the replacement of the “or” with a comma was intentional or an oversight, as there is nothing in the explanatory material accompanying R.A. 6940 to explain the change, nor was it discussed in parliament. Section 44 is also now in conflict with Section 115 of C.A. 141 which provides that the taxes must be paid in the year following the issue of the free patent.

It would expedite systematic adjudication and encourage greater participation by landholders if free patents could issue without requiring payment of taxes, providing there is a valid claim to ownership. DENR Memorandum Circular No. 9 of May 5, 1993 and Joint DAR-DENR Memorandum Circular No.14 Series of 1997 required that the real estate taxes must be paid, although LRA MC dated February 20, 1990 provides that Realty Tax clearance need not be required in the initial registration of patent titles. The Department of Justice, in an advising to the LAMP Task Force dated May 29, 2002, stated that original certificates of title should be issued irrespective of whether or not taxes due on the land have been paid. It was further stated that “The issuance and delivery of ordinary, cadastral or

patent titles should under no circumstances be used as a means for enforcing the collection of land taxes”.

In Joint DENR-DAR Circular 2003-01 DENR once again provided that, before a patent can be issued, real estate taxes must be paid. It is evident from this that the relevant agencies are unclear of the current law and this amendment seeks to make the law clear.

The issue of a free patent grant revolves around constructive possession, and not fiscal concerns, and non-payment of tax cannot and should not stand in the way of evolution of the right of ownership. The issue of a patent over land with taxes owing does not mean the tax liability is waived. The issue of a title to land formalizes the ownership thereof and brings it within the legal system, and will actually facilitate the collection of taxes.

Tenancy of the land not to affect eligibility of applicant

The pilot project of LAMP in Leyte showed that 60% of the lands programmed for titling by free patents are tilled by tenants or agricultural farm workers. Doubts have been raised whether it is the landlord or the tenant who shall be entitled to a free patent. This Bill seeks to clarify Section 44 by providing that if there are tenants, sharecroppers, regular or seasonal farm workers on the land, the landlord, if not otherwise disqualified, shall have the right to a free patent to the land, but the issuance of a title thereto shall be without prejudice to the rights of the tenant beneficiary under the existing land reform laws.

Tenancy, sharecropping and the like are in essence lease contracts on the land. It is fundamental in law that a lessee (the tenant) cannot put any claim to the land in derogation of the lessor.

Concerns have been expressed that the provisions of P.D. No. 152 affect the issue of free patents. Under PD No. 152, promulgated on March 13, 1973, the employment or use of share tenants in complying with the requirements of law regarding entry, occupation, improvement and cultivation of public lands is prohibited. The Review of Laws, Policies and Institutional Set-Up on Tenancy in the Philippines, however, determined that the prohibition under PD 152 against the employment or use of share tenants in complying with the requirements of law regarding entry, occupation, improvement and cultivation of public lands does not apply to free patents. The implementing rules and regulations of PD 152 (DAO 27-73) provide that it shall be applicable to homestead, sales or lease applications for agricultural purposes (however, for abundant caution, Section 19 of this Bill amends P.D. 152 to provide that it does not apply to free patents). Thus, free patents issued to absentee-claimants who may have employed tenants on the land are deemed valid.

The proposed amendment clarifies that the applicant for a free patent is not precluded if he or she is not the tiller of the land.

Changing the basis for eligibility for issue of a grant from “occupation and cultivation” to “possession”

This amendment further clarifies that the tenancy of the land does not preclude an application for issue of free patent by the landlord by replacing the requirement for occupation and cultivation with possession.

Confirming that the total area of agricultural lands that an eligible person may hold is not more than twelve (12) hectares

This amendment makes it clear that if an applicant already holds agricultural land, the issue of free patent is not to take the total holding of the applicant beyond twelve (12) hectares.

SECTION 2

In 1982 Batas Pambansa Blg. 223 introduced provisions extending Free Patents to residential lands of the public domain, although it was expressly provided that the provisions did not apply to residential lands located in cities, in capitals of provinces, in first class, second class, third class and fourth class municipalities, and in townsite reservations. It was also provided that all applications for free patent should be filed on or before December 31, 1987. This deadline has never been extended.

The pilot activities conducted under LAMP have highlighted that there is a need to extend these provisions to apply to all residential land. At the moment, owners of residential, commercial and industrial land are restricted to applications for miscellaneous sales patents and to individual claims to the court for a judicially confirmed title. The flexible patent processes would provide a simple and cheap alternative.

It may be argued that by extending free patents to all residential land the government may lose revenue from parcels that would otherwise be available for sale. However, the loss will not be high as most land in 4th to 1st class city/municipality are titled and the only ones left are those possessed by those with insufficient means to purchase them.

Eligibility for issue of a free patent for residential land is also determined by possession, as in Section 1. This will allow all residential land to be covered by the amendment, including vacant residential land. The absence of a dwelling should not preclude an applicant from receiving a grant, providing the usual evidentiary requirements are met.

Consideration was given to limiting the application of this sub-section to parcels of land not exceeding 1000m², as provided by R.A. 730. That Act established a process for issuing sale patents by direct sale for residential land containing a house. However, under the Public Land Act, where the land does not contain a house, there is no maximum area restriction, and so an area restriction has not been applied here.

SECTION 3

In the event that the applicant has not been in possession for the mandatory ten (10) years, in accordance with the amendments contained in sub-sections (1) and (2), a certificate of possession/provisional free patent may be issued to the applicant, which may be exchanged

for a free patent upon the expiration of 10 years of possession. This will allow more land to be brought within the legal system, and will prevent the need for the land to be adjudicated a second time if the 10-year mandatory possession requirement is not fulfilled at the time of adjudication.

SECTION 4

Under Section 118 of the Public Land Act, lands acquired by free patent or homestead provisions shall not be subject to encumbrances or alienation from the date of approval and for a term of five (5) years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; except in favor of the government or any of its branches of units or institutions or legally-constituted banking corporations.

This Bill excludes the provisions of Section 118 from lands acquired under the free patent provisions of the Public Land Act. These provisions are not appropriate in situations where persons have been in possession and occupation of the land for many years. These persons should be allowed to transfer their lands or mortgage them to lending institutions in the same way as persons acquiring title through the judicial titling process. The restrictions do not apply where a title issues under the judicial titling process. Lands acquired by free patent should be placed on the same footing as lands titled by judicial proceedings and should be excluded from the restrictions imposed by section 118.

Removal of the restrictions imposed by Section 118 is also supported by the Farmland Co-operative Bill currently before Congress, whereby under that Bill, CARP beneficiaries may immediately sell or mortgage land issued to them.

Furthermore, unrestricted ownership of the land would be in keeping with the principle of a free land market as a contributor to the nation's growth through the development of a market economy.

S.121, CA 141 provides that, except with the consent of the grantee and the approval of the Secretary of Natural Resources, and solely for commercial, industrial, educational, religious or charitable purposes or for right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead, or individual sale provisions of this Act or to any permanent improvement on such land.

This is another restriction on the operation of a free land market which does not apply to titles issued under the judicial titling process, and is removed by this Section.

Section 122, 123 and 124 place further restrictions on the disposition of land acquired by patents, and these restrictions have also been removed from free patents.

SECTION 5

The Mortgage Study in LAMP PIO 1 Areas considered, inter alia, the issue of whether land still the subject of a Free Patent Application can be validly mortgaged.

The Supreme Court has stated that a land parcel still untitled and the subject of a Free Patent Application cannot be validly mortgaged because it is still part of the public domain. It is an essential requisite for the validity of a mortgage that the mortgagor be the absolute owner of the thing mortgaged (Art. 2085, Civil Code of the Philippines). The mortgage is void and ineffective because at the time it was constituted, the mortgagor was not yet the owner of the land mortgaged (DBP vs. Court of Appeals, et.al, G.R. NO. 109946 Feb. 9, 1996)

The Report also questioned if the subsequent acquisition by the mortgagor of the title over the land through the issuance of a free patent could validate and legalize the mortgage. The Report concluded that it could not, because upon the issuance of the patent, the land in question was already brought under the operation of the Public Law which prohibits the taking of said land for the satisfaction of debts contracted prior to the expiration of five (5) years from the date of the issuance of the patent (Sec. 118, C.A. No. 141). This prohibition should include not only debt contracted during the five (5) year period immediately preceding the issuance of the patent but also those contracted before such issuance (Bautista vs. Brigida Marcos, et.al.)

The issue of a free patent should not adversely affect those who hold an interest in the land created before the grant. The issue of a free patent should reflect and recognize the realities on the ground. The proposed amendment will validate those encumbrances entered into prior to the application for free patent. Only those encumbrances that create an interest in land may be carried forward.

SECTION 6

Section 6 of the Bill is inserted to clarify what lands are available for the issue of a free patent. In Joint DENR-DAR Memorandum Circular no 2003-01, which re-affirmed the policies and procedures contained in the Joint DAR-DENR Memorandum Circular Nos. 14 and 19 of 1997, it was stated that:

“the criteria mentioned in paragraph II-B, Joint M.C. No 14, series of 1997, for determining whether or not a specific landholding has attained the status of untitled private agricultural land are hereby stated as follows:

A.

B. The land must have been classified as Alienable and Disposable for at least thirty (30) years prior to the effectivity of R.A. 9176 on December 04, 2002;

There is no question as to the requirement that the land applied for must be classified as alienable and disposable. At present, only such lands are susceptible of acquisition under the Public Land Act. This is in accordance with Section 8 of the Public Land Act.

However, there is nothing in Section 8 which requires that the land must be classified as A & D for a number of years. Neither is there any provision in the free patent law (Section 44 of the Public Land Act) or in R.A.9176 which requires that the land must have been classified as alienable and disposable for thirty (30) years prior to December 4, 2002.

This criterion failed to consider that there are many cities and municipalities where the DENR has not done any land classification or has done it only after December 4, 1972, either because of lack of funds or because the cities or municipalities are not high priority in the DENR's land classification program. Most of these lands are below 18% in slope and absolutely without forest value, agricultural in nature and actual use, and occupied and cultivated by small landowners who depend on such lands for their livelihood. These people should not be denied the right to acquire their title by free patent just because the government failed to classify the land before December 4, 1972. The more important thing is that the land has already been classified as alienable and disposable at the time the patent is applied for or issued. This policy would be more realistic and responsive to the needs of small farmers.

Section 6 now further provides that areas that are unclassified land, but are already built-up or with settlers, shall be deemed classified as alienable and disposable/agricultural by virtue of the Act. This provision merely reflects the reality on the ground where areas have been built up or settled, but the land has yet to be classified. Where a possessor would otherwise be entitled, they should not be precluded from the issue of a free patent because the land is unclassified.

It should be noted that the amendments do not extend the operation of free patents to private lands, or land that has been otherwise classified than alienable and disposable, and accordingly do not open up such land to claims by squatters.

SECTION 7

One of the aims of this amendment is to apply free patents to as much land as possible. Prior to the amendment it applies only to agricultural land. After the amendment it will also apply to residential, commercial, and industrial land.

The aim of this section is also to extend it to government owned land, allowing the state to make use of the simplified free patent procedures. This will permit the government at all levels to acquire a certificate of title for A&D land used for public purposes (eg, schools, hospitals, rural health care centres, day care centres, police stations, government offices, barangay halls and public sport facilities etc.). Existing processes to issue a special patent on Government land are complex and time-consuming, and done in isolation. Titled land is better protected from encroachment. The effect of these amendments is to maximize the impact of the mass titling approach to place all A & D lands onto the Register of Land Titles, both private and government land in the municipality.

(Government land can also be titled by special patent, but the procedure is time-consuming, complex and not widely used).

SECTION 8

The extent of the land acquisible by free patent under the Public Land Act must be rationalized. The following are the maximum areas under past legislations, to wit:

1. Act No. 926 of 1903 – 16.0000 hectares
2. Act No. 2874 of 1919 – 24.0000 hectares

3. C.A. No. 141 of 1936 – 24.0000 hectares

It was only in 1990 – some eighty-seven (87) years later, with the enactment of R.A. No. 6940 that the maximum limit was reduced to only twelve (12) hectares – perhaps, to attune it with the then newly ratified constitution which reduced the allowable limit if homestead and individual agricultural sales from 24 hectares as provided in the 1973 Constitution. R.A. No. 9176 of November 13, 2002, which (extended the period to file free patent application to December 21, 2020), retained the maximum area of 12 hectares.

R.A. Nos. 6940 and 9176 are clear expressions of legislative will and must be given full force and effect by the DENR. It appears, however, that the DENR has gone further by reducing the maximum to only five (5) hectares.

This section will be more in keeping with the land reform in the country. If an applicant has occupied and cultivated a tract of land of 12.0000 has and he gets a free patent for the whole area, he will be allowed to retain five (5) hectares and the remaining seven (7) hectares becomes subject to OLT. On the other hand, if he will be limited to only five (5) hectares, there is nothing to prevent him from assigning the excess area to his kins who will then apply therefore, thereby enabling him and his family to keep or retain the whole area of 12 has. – effectively removing the land from OLT.

This amendment has been added to ensure that there is no doubt that a free patent may be issued for up to the limit provided for by the Constitution, twelve (12) hectares, notwithstanding the operation of The Comprehensive Agrarian Reform Law (CARL) RA 6657. This will provide support for those RODs who feel they are in breach of R.A 6657 by registering free patents over 5 hectares.

SECTIONS 9 AND 10

The time limits for legislation implementing free patents (Section 45 C.A.141) and judicial titling (Section 47 C.A. 141) have created problems in the administration of the Public Land Act. For example, in 2000 the law enabling free patent titling expired and it took 2 years to re-enact the law (R.A. 9176). The new law also contains a 20-year time limit. This time limit should be removed now, so that this issue does not arise in 2020. There is no reason for the retention of these provisions, and they have been repealed.

SECTION 11

Section 48 (b) of the Public Land Act provides that the possessor who satisfies its requirements “shall be conclusively presumed to have performed all the conditions essential to a government grant, and shall be entitled to a certificate of title under the provisions of this chapter”.

In *Susi vs. Razon* (48 Phil. 424), the Supreme Court held that the possessor is deemed to have acquired, by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land perforce ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of. “The application for confirmation is then a mere formality, lack of which does not affect the sufficiency of the title as would be evidence by a patent and the corresponding Torrens certificate of title

issued pursuant to such patent". In *Director of Lands vs. IAC and ACME Plywood and Vencer Corp.*, (146 SCRA 509), the Supreme Court held that after the lapse of the period prescribed by law, the land *ipso jure* ceases to be public and becomes private property of the possessor.

This is the reason why in *Lands Circular No. 16 (Manual for Public Land Inspectors)*, the inspectors of the Bureau of Lands are instructed to refrain from giving due course to free patent applications where the land applied for has been in open, continuous, exclusive and notorious possession and occupation of the land under a bona fide claim of acquisition of ownership since July 26, 1894 (now since June 12, 1945), and to advise the free patent applicant to go to court and file instead of an application for judicial confirmation of imperfect title under Section 48(b) of the Public Land Act. But it appears that the Bureau of Lands has departed from this rule, especially on cadastral lots because of its need for patentable materials – proceeding from the premise that if the cadastral claimant files a free patent application therefore it stands as a waiver of his private claim to the land.

The validity of such patents, however, is open to question. In *Dela Concha vs. Magtira* (18 SCRA 398), the Supreme Court held that the Director of Lands has no authority to grant to another a free patent for land that ceased to be public and has passed into private ownership. In *Herico vs. DAR* (95 SCRA 47) the Supreme Court held that if title over the land has vested to the possessor, the land is no longer disposable under the Public Land Act as by free patent. In *Magistrado et al., vs. Esplana* (185 SCRA 105), the Supreme Court sustained the cancellation of nine (9) original certificates of titles issued on the basis of free patent granted by the Director of Lands on the ground that the lots covered thereby were not public land but private property, thus, the Director of Lands had no power of authority to dispose thereof under the Public Land Act.

The proposed amendment will now allow the issue of a free patent where the applicant has satisfied the requirements of Section 48, will facilitate the issuing of land titles, and will offer a saving of up to an estimated PhP 80,000 in fees for the applicant which would otherwise be payable for judicial confirmation of title.

SECTION 12

To accelerate patent issuance under mass titling, delegation to appropriate levels is necessary.

Section 107 of the Public Land Act currently provides that the President of the Philippines may delegate to the Secretary of Agriculture and Natural Resources and/or the Under Secretary for Natural Resources the power to sign patents or certificates covering lands not exceeding one hundred forty-four hectares in area, and to the Secretary of Agriculture and Natural Resources the power to sign patents or certificates covering lands exceeding one hundred forty-four hectares in area.

The requirement for the President to delegate the power to sign patents and certificates is onerous and the procedure to implement the delegation cumbersome. Section 12 amends Section 107 by providing that the Secretary of Environment and Natural Resources may now sign all patents in lieu of the President and that the Secretary of Environment and Natural Resources may now delegate the power to sign patents or certificates. As the Secretary of Environment and Natural Resources alone is given the power to sign (or

delegate the signing of) all patents, there is no need to differentiate between patents exceeding one hundred forty-four hectares in area and those less than that area, and Section 107 has been amended accordingly.

Section 107 also currently provides that District Land Officers in every province are empowered to sign patents or certificates covering lands not exceeding five hectares in area when the office of the District Land Officer is properly equipped to carry out the purposes of the Act. There is no criteria in the Act for determining when the office of the District Land Officer is properly equipped to carry out the purposes of the Act. The proposed amendment will remove this subjective requirement, will validate the current practice whereby DENR has delegated the signing of the patent to PENRO, and will also authorize the future delegation by the Secretary to the mass titling base camp, thereby removing a bottleneck in the issue of free patents.

References to District Land Officer have also been updated to Community and Environment Natural Resources Officers.

SECTION 13

Section 119 of C.A. No. 141 provides that every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widows or legal heirs within a period five (5) years from the date of conveyance.

Some decisions have been rendered by the Supreme Court to the effect that the grantee who exercises his right of repurchase under Section 119 cannot be made to pay more than the amount he had received from the purchaser, even if the value of the land has appreciated considerably from the conveyance date to the time of repurchase. This can be unfair to the buyer, especially if the value of the land had appreciated because of his own investments on the property. Also, some decisions have been rendered by the Supreme Court that a buyer who has introduced valuable improvements on the land is considered a builder in bad faith and thus not entitled to reimbursement for his improvements. This ruling allows one to unjustly enrich himself at the expense of another.

The right of repurchase was originally enacted to keep the lands within the family of the patentee. While this restriction may have been appropriate in the past, the wisdom of retaining it is doubtful. The provision should also be repealed for the same reasons stated with respect to restrictions under Section 118. This Bill, therefore, repeals Section 119.

SECTIONS 14 TO 18

Sections 14 to 18 of the Bill amend Sections 129 to 133 respectively of the Public Lands Act to provide that where a public official or government official/employee commits an offense under the Act, he/she shall be, in addition, removed from the office, forfeit all retirement benefits, except for accumulated leave credits and be perpetually disqualified from holding any elective or appointive public office. The penalties provided by Sections 131, 132 and 133 have also been increased, following review in Congress, so as to be more attuned to the prevailing times.

PART II

SECTION 19

This Section has been added because of doubt concerning the operation of Presidential Decree 152 Prohibiting the Employment or Use of Share Tenants in Complying with Requirements of Law Regarding Entry, Occupation, Improvement and Cultivation of Public Lands.

The Review of Laws, Policies and Institutional Set-Up on Tenancy in the Philippines has determined that the prohibition under PD 152 against the employment or use of share tenants in complying with the requirements of law regarding entry, occupation, improvement and cultivation of public lands does not apply to free patents. The implementing rules and regulations of PD 152 (LAO 27-73) provide that it shall be applicable to homestead, sales or lease applications for agricultural purposes. Thus, free patents issued to absentee-claimants who may have employed tenants on the land are deemed valid.

However, doubts have been raised as to whether the Administrative Order is interpreting, or actually purporting to amend, P.D.152. It may be argued that an A.O. is unable to amend substantive law. Accordingly, for abundant caution, P.D. 152 is amended to make clear that the provisions therein do not apply to free patents.

(Section 1 of P.D. 152 provides that:

“it shall be an essential condition in every application for, or grant of, agricultural lands of the public domain under the provisions of Commonwealth Act No. 141, as amended, that the applicant or his transferee shall enter and work upon, improve and cultivate the land by himself...”

The amendments to the Public Land Act in Part I further remove P.D. 152 from jurisdiction over free patents by replacing the criteria for eligibility for issue of a grant form “occupation and cultivation” with “possession”)

PART III

SECTIONS 20 AND 21

Because of the initial start up costs associated with systematic rights registration it is not practical to attempt to recoup all of those costs. International experience through a number of projects has noted that cost recovery must be set at a low level to encourage persons to use the process. The gap between cost and recovery is effectively a government subsidy of the process. It is unlikely, however, that a project that is designed to help the poor can be sustainable without such a subsidy. The advantage of subsidizing the process is that it makes the process of parcel-based rights registration viable. Notwithstanding the cost to the government in providing the subsidy, there are greater benefits seen for the future than the costs at present.

Accordingly, Sections 20 and 21 abolish the fees payable to the RODs for free patents. At present the fees paid to the RODs are 90 pesos for the entry fee under Section 111 of P.D. 1529, and the contribution to the Assurance Fund under Section 93, which is one-fourth of one per cent of the assessed value. The current average fee paid under Section 93 in Leyte Province, where the prototype of LAMP is operating, is 19 pesos. Section 25 of this Bill abolishes all other fees payable for the issue of land grants.

The abolition of fees for free patents will make the free patent truly free. This will encourage greater participation in the free patent process, and will alleviate complaints that the free patents are not free.

PART IV

SECTION 22

This section provides that the penal provisions will not apply retrospectively, in accordance with fundamental legal principles.

SECTION 23

This section provides that The Department of Environment and Natural Resources may adopt new mapping and surveying technologies as they become available to expedite the issuance of free patents. The Department is also given the authority to determine the format and style of the technical description of the land as it appears on the free patent and title issued subsequent thereto. This will allow the registration of patent titles with alternative technical descriptions, such as a graphical technical description, in lieu of the traditional numerical technical description.

SECTION 24

This section allows all applications lodged but not yet completed at the time of promulgation of the Act to be processed in accordance with the new provisions.

SECTION 25

Sections 20 and 21 abolish the fees payable to the RODs for free patents, and the explanatory note for those sections should be read in conjunction with this note.

Section 25 abolishes all other fees. The current fee payable to DENR comprises a cadastral fee at an average fee of 550 pesos and the patent application fee of 50 pesos. The cadastral fee is no longer to be charged as it is not lawful to do so for free patents.

Section 25 will ensure that the free patent process is now without cost to the applicant.

SECTION 4

Under Section 118 of the Public Land Act, lands acquired by free patent or homestead provisions shall not be subject to encumbrances or alienation from the date of approval and

for a term of five (5) years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; except in favor of the government or any of its branches of units or institutions or legally-constituted banking corporations.

This Bill excludes the provisions of Section 118 from lands acquired under the free patent provisions of the Public Land Act. These provisions are not appropriate in situations where persons have been in possession and occupation of the land for many years. These persons should be allowed to transfer their lands or mortgage them to lending institutions in the same way as persons acquiring title through the judicial titling process. The restrictions do not apply where a title issues under the judicial titling process. Lands acquired by free patent should be placed on the same footing as lands titled by judicial proceedings and should be excluded from the restrictions imposed by section 118.

Removal of the restrictions imposed by Section 118 is also supported by the Farmland Co-operative Bill currently before Congress, whereby under that Bill, CARP beneficiaries may immediately sell or mortgage land issued to them.

Furthermore, unrestricted ownership of the land would be in keeping with the principle of a free land market as a contributor to the nation's growth through the development of a market economy.

S.121, CA 141 provides that, except with the consent of the grantee and the approval of the Secretary of Natural Resources, and solely for commercial, industrial, educational, religious or charitable purposes or for right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead, or individual sale provisions of this Act or to any permanent improvement on such land.

This is another restriction on the operation of a free land market which does not apply to titles issued under the judicial titling process, and is removed by this Section.

Section 122, 123 and 124 place further restrictions on the disposition of land acquired by patents, and these restrictions have also been removed from free patents.

SECTION 5

The Mortgage Study in LAMP Areas considered, inter alia, the issue of whether land still the subject of a Free Patent Application can be validly mortgaged.

The Supreme Court has stated that a land parcel still untitled and the subject of a Free Patent Application cannot be validly mortgaged because it is still part of the public domain. It is an essential requisite for the validity of a mortgage that the mortgagor be the absolute owner of the thing mortgaged (Art. 2085, Civil Code of the Philippines). The mortgage is void and ineffective because at the time it was constituted, the mortgagor was not yet the owner of the land mortgaged (DBP vs. Court of Appeals, et.al, G.R. NO. 109946 Feb. 9, 1996)

The Report also questioned if the subsequent acquisition by the mortgagor of the title over the land through the issuance of a free patent could validate and legalize the mortgage. The

Report concluded that it could not, because upon the issuance of the patent, the land in question was already brought under the operation of the Public Law which prohibits the taking of said land for the satisfaction of debts contracted prior to the expiration of five (5) years from the date of the issuance of the patent (Sec. 118, C.A. No. 141). This prohibition should include not only debt contracted during the five (5) year period immediately preceding the issuance of the patent but also those contracted before such issuance (Bautista vs. Brigida Marcos, et.al.)

The issue of a free patent should not adversely affect those who hold an interest in the land created before the grant. The issue of a free patent should reflect and recognize the realities on the ground. The proposed amendment will validate those encumbrances entered into prior to the application for free patent. Only those encumbrances that create an interest in land may be carried forward.

SECTION 6

Section 6 of the Bill is inserted to clarify what lands are available for the issue of a free patent. In Joint DENR-DAR Memorandum Circular no 2003-01, which re-affirmed the policies and procedures contained in the Joint DAR-DENR Memorandum Circular Nos. 14 and 19 of 1997, it was stated that:

“the criteria mentioned in paragraph II-B, Joint M.C. No 14, series of 1997, for determining whether or not a specific landholding has attained the status of untitled private agricultural land are hereby stated as follows:

C.

D. The land must have been classified as Alienable and Disposable for at least thirty (30) years prior to the effectivity of R.A. 9176 on December 04, 2002;

There is no question as to the requirement that the land applied for must be classified as alienable and disposable. At present, only such lands are susceptible of acquisition under the Public Land Act. This is in accordance with Section 8 of the Public Land Act.

However, there is nothing in Section 8 which requires that the land must be classified as A & D for a number of years. Neither is there any provision in the free patent law (Section 44 of the Public Land Act) or in R.A.9176 which requires that the land must have been classified as alienable and disposable for thirty (30) years prior to December 4, 2002.

This criterion failed to consider that there are many cities and municipalities where the DENR has not done any land classification or has done it only after December 4, 1972, either because of lack of funds or because the cities or municipalities are not high priority in the DENR's land classification program. Most of these lands are below 18% in slope and absolutely without forest value, agricultural in nature and actual use, and occupied and cultivated by small landowners who depend on such lands for their livelihood. These people should not be denied the right to acquire their title by free patent just because the government failed to classify the land before December 4, 1972. The more important thing is that the land has already been classified as alienable and disposable at the time the patent

is applied for or issued. This policy would be more realistic and responsive to the needs of small farmers.

Section 6 now further provides that areas that are unclassified land, but are already built-up or with settlers, shall be deemed classified as alienable and disposable/agricultural by virtue of the Act. This provision merely reflects the reality on the ground where areas have been built up or settled, but the land has yet to be classified. Where a possessor would otherwise be entitled, they should not be precluded from the issue of a free patent because the land is unclassified.

It should be noted that the amendments do not extend the operation of free patents to private lands, or land that has been classified other than alienable and disposable, and accordingly do not open up such land to claims by informal settlers.

SECTION 7

One of the aims of this amendment is to apply free patents to as much land as possible. It currently applies only to agricultural land. After the amendment it will also apply to residential, commercial, and industrial land. The aim of this section is also to extend it to government owned land, committing the state to make use of the simplified free patent procedures. This will permit the government at all levels to acquire a certificate of title for A&D land used for public purposes (eg, schools, hospitals, rural health care centres, day care centers, police stations, government offices, barangay halls and public sport facilities). The net effect of these amendments is to permit the adjudication team to maximize its land titling functions for all private and government land in the municipality.

(Government land can also be titled by special patent, but the procedure is time-consuming, complex and not widely used).

SECTION 8

The Public Lands Act recognizes that free patents can be issued for land up to 12ha in area. However, Joint DAR-DENR Memorandum Circular No.14 of 1997 limits a free patent to 5ha, with DAR first covering the excess area and issuing a CLOA or Emancipation Patent as the case may be prior to the issue of the free patent. The issue of free patents up to 12ha would speed up the mass titling process. MARO has agreed and has confirmed that the titling process will in fact help its efforts at land redistribution. The existence of a title and a land survey will assist MARO in its recovery process. Registration of a title exceeding 5ha does not hinder MARO's work and it removes the potential for claimants to use the land titling process to avoid CARP obligations by subdividing the land before titles are issued.

This amendment has been added to ensure that there is no doubt that a free patent may be issued for up to the limit provided for by the Constitution, twelve (12) hectares, notwithstanding the operation of The Comprehensive Agrarian Reform Law (CARL) RA 6657. This will provide support for those RODs who feel they are in breach of R.A 6657 by registering free patents over 5 hectares.

SECTIONS 9 AND 10

The time limits for legislation implementing free patents (Section 45 C.A.141) and judicial titling (Section 47 C.A. 141) have created problems in the administration of the Public Land Act. For example, in 2000 the law enabling free patent titling expired and it took 2 years to re-enact the law (R.A. 9176). The new law also contains a 20-year time limit. This time limit should be removed now, so that this issue does not arise in 2020. There is no reason for the retention of these provisions, and they have been repealed.

SECTION 11

Section 48 (b) of the Public Land Act provides that the possessor who satisfies its requirements “shall be conclusively presumed to have performed all the conditions essential to a government grant, and shall be entitled to a certificate of title under the provisions of this chapter”.

In *Susi vs. Razon* (48 Phil. 424), the Supreme Court held that the possessor is deemed to have acquired, by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land perforce ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of. “The application for confirmation is then a mere formality, lack of which does not affect the sufficiency of the title as would be evidence by a patent and the corresponding Torrens certificate of title issued pursuant to such patent”. In *Director of Lands vs. IAC and ACME Plywood and Vencer Corp.*, (146 SCRA 509), the Supreme Court held that after the lapse of the period prescribed by law, the land ipso jure ceases to be public and becomes private property of the possessor.

This is the reason why in *Lands Circular No. 16* (Manual for Public Land Inspectors), the inspectors of the then Bureau of Lands are instructed to refrain from giving due course to free patent applications where the land applied for has been in open, continuous, exclusive and notorious possession and occupation of the land under a bona fide claim of acquisition of ownership since July 26, 1894 (now since June 12, 1945), and to advise the free patent applicant to go to court and file instead of an application for judicial confirmation of imperfect title under Section 48(b) of the Public Land Act. But it appears that the Bureau of Lands has departed from this rule, especially on cadastral lots because of its need for patentable materials – proceeding from the premise that if the cadastral claimant files a free patent application therefore it stands as a waiver of his private claim to the land.

The validity of such patents, however, is open to question. In *Dela Concha vs. Magtira* (18 SCRA 398), the Supreme Court held that the Director of Lands has no authority to grant to another a free patent for land that ceased to be public and has passed into private ownership. In *Herico vs. DAR* (95 SCRA 47) the Supreme Court held that if title over the land has vested to the possessor, the land is no longer disposable under the Public Land Act as by free patent. In *Magistrado et al., vs. Esplana* (185 SCRA 105), the Supreme Court sustained the cancellation of nine (9) original certificates of titles issued on the basis of free patent granted by the Director of Lands on the ground that the lots covered thereby were not public land but private property, thus, the Director of Lands had no power of authority to dispose thereof under the Public Land Act.

The proposed amendment will now allow the issue of a free patent where the applicant has satisfied the requirements of Section 48, will facilitate the issuing of land titles, and will offer a saving of up to an estimated PhP 80,000 in fees for the applicant which would otherwise be payable for judicial confirmation of title.

SECTION 12

Section 7 amends Section 107 of the Public Land Act by removing the requirement that the President may delegate the power to sign patents and certificates for land issued under the Act. The power of delegation is now given directly to the Secretary of Environment and Natural Resources.

The requirement for the President to delegate the power to sign patents and certificates is onerous and the procedure to implement the delegation cumbersome. The proposed amendment will validate the current practice whereby DENR has delegated the signing of the patent to PENRO, and will also authorize the future delegation by the Secretary to the field offices base camp, thereby removing a bottleneck in the issue of free patents.

SECTION 13

Section 119 of C.A. No. 141 provides that every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widows or legal heirs within a period five (5) years from the date of conveyance.

Some decisions have been rendered by the Supreme Court to the effect that the grantee who exercises his right of repurchase under Section 119 cannot be made to pay more than the amount he had received from the purchaser, even if the value of the land has appreciated considerably from the conveyance date to the time of repurchase. This can be unfair to the buyer, especially if the value of the land had appreciated because of his own investments on the property. Also, some decisions have been rendered by the Supreme Court that a buyer who has introduced valuable improvements on the land is considered a builder in bad faith and thus not entitled to reimbursement for his improvements. This ruling allows one to unjustly enrich himself at the expense of another.

The right of repurchase was originally enacted to keep the lands within the family of the patentee. While this restriction may have been appropriate in the past, the wisdom of retaining it is doubtful. The provision should also be repealed for the same reasons stated with respect to restrictions under Section 118. This Bill, therefore, repeals Section 119.

SECTIONS 14 TO 18

Sections 14 to 18 of the Bill amend Sections 129 to 133 respectively of the Public Lands Act to provide that where a public official or government official/employee commits an offense under the Act, he/she shall be, in addition, removed from the office, forfeit all retirement benefits, except for accumulated leave credits and be perpetually disqualified from holding any elective or appointive public office. The penalties provided by Sections

131, 132 and 133 have also been increased, following review in Congress, so as to be more attuned to the prevailing times.

PART II

SECTION 19

This Section has been added because of doubt concerning the operation of Presidential Decree 152 Prohibiting the Employment or Use of Share Tenants in Complying with Requirements of Law Regarding Entry, Occupation, Improvement and Cultivation of Public Lands.

The Review of Laws, Policies and Institutional Set-Up on Tenancy in the Philippines has determined that the prohibition under PD 152 against the employment or use of share tenants in complying with the requirements of law regarding entry, occupation, improvement and cultivation of public lands does not apply to free patents. The implementing rules and regulations of PD 152 (LAO 27-73) provide that it shall be applicable to homestead, sales or lease applications for agricultural purposes. Thus, free patents issued to absentee-claimants who may have employed tenants on the land are deemed valid.

However, doubts have been raised as to whether the Administrative Order is interpreting, or actually purporting to amend, P.D.152. It may be argued that an A.O. is unable to amend substantive law. Accordingly, for abundant caution, P.D. 152 is amended to make clear that the provisions therein do not apply to free patents.

(Section 1 of P.D. 152 provides that:

“it shall be an essential condition in every application for, or grant of, agricultural lands of the public domain under the provisions of Commonwealth Act No. 141, as amended, that the applicant or his transferee shall enter and work upon, improve and cultivate the land by himself...”

The amendments to the Public Land Act in Part I further remove P.D. 152 from jurisdiction over free patents by replacing the criteria for eligibility for issue of a grant form “occupation and cultivation” with “possession”)

PART III

SECTIONS 20 AND 21

Because of the initial start up costs associated with systematic rights registration it is not practical to attempt to recoup all of those costs at the one time. International experience shows that initial cost must be set at a low level to encourage persons to enter the formal system. The gap between cost and initial payment is effectively a government subsidy of bringing land onto the formal Register. The advantage of subsidizing the process is that it makes the process of parcel-based rights registration a minimum cost since full participation results in low unit cost due to economies of scale of systematic titling of whole LGU's. Notwithstanding the cost to the government in providing the initial subsidy the Government

through its various taxes on registration of transactions and on annual RPT will recoup many times the initial investment. With a revamped property valuation base the tax base becomes a growing base.

Accordingly, Sections 20 and 21 abolish the fees payable to the RODs for free patents. At present the fees paid to the RODs are 90 pesos for the entry fee under Section 111 of P.D. 1529, and the contribution to the Assurance Fund under Section 93, which is one-fourth of one per cent of the assessed value. The current average fee paid under Section 93 in Leyte Province, where the prototype of LAMP is operating, is 19 pesos. Section 25 of this Bill abolishes all other fees payable for the issue of land grants.

The abolition of fees for free patents will make the free patent truly free. This will encourage greater participation in the free patent process, and will alleviate complaints that the free patents are not free.

PART IV

SECTION 22

This section provides that the penal provisions will not apply retrospectively, in accordance with fundamental legal principles.

SECTION 23

This section provides that The Department of Environment and Natural Resources may adopt new mapping and surveying technologies as they become available to expedite the issuance of free patents. The Department is also given the authority to determine the format and style of the technical description of the land as it appears on the free patent and title issued subsequent thereto. This will allow the registration of patent titles showing alternative technical descriptions, such as a graphical technical description, in lieu of the traditional numerical technical description.

SECTION 24

This section allows all applications lodged but not yet completed at the time of promulgation of the Act to be processed in accordance with the new provisions.

SECTION 25

Sections 20 and 21 abolish the fees payable to the RODs for free patents, and the explanatory note for those sections should be read in conjunction with this note.

Section 25 abolishes all other fees. The current fee payable to DENR comprises a cadastral fee at an average fee of 550 pesos and the patent application fee of 50 pesos. The cadastral fee is no longer to be charged as it is not lawful to do so for free patents.

Section 25 will ensure that the free patent process is now without cost to the applicant.

**Matters for Consideration for Inclusion in Draft DENR-DOJ-DAR-BIR Circular No
XX-04**

**SUBJECT: PROPOSED SYSTEMATIC REGISTRATION REGULATION (TO BE
ISSUED BEFORE AMENDMENTS TO THE PUBLIC LAND ACT)**

1. **For the purpose of facilitating the mass titling of free patents, the following rules and regulations are hereby promulgated:**
 - a. **A single notice of applications is to apply to multiple parcels rather than requiring a single notice for each parcel. The notice should not be an individual notice for each land parcel but it should be a single notice containing multiple applications.** (This will simplify not only the preparation and posting of notices but also the affidavit of posting.)
 - b. **The public notice is to be displayed by the base camp rather than by CENRO personnel.** (This will permit the interview and acceptance of the evidence, the posting and the ocular inspection to be completed before the file is referred to CENRO for review of the application.)
 - c. **The affidavit of public notice from the Systematic Adjudication Team Leader, that notices have been displayed and no objections received, is sufficient to satisfy the notice requirements.** (See b. above.)
 - d. **Public objections or protests may be accepted by the base camp.** (As all operations at this stage are intended to be carried out by the base camp it seems appropriate that objections be received by the base camp. This will have the advantage of facilitating public access.)
 - e. **Objections received on one or more parcels shall not delay the processing of the remaining parcels.** (Where an objection is received in respect of a parcel included in a mass notice of applications, processing should still proceed in respect of the parcels which are not the subject of objection.)
 - f. **The ocular inspection and the original interview are to be carried out at the same time.** (In previous applications received on an individual basis, the application is posted by CENRO after the owner lodges an application for public land supported by documentary evidence. The posting occurs and then the deputy public land inspector goes into the field to conduct the ocular inspection. Although these processes work well for individual applications initiated by the owner, they bring inefficiencies for systematic titling processes. For example, it means two separate interviews by the adjudicator (i) to complete the application and to receive the evidence. Then a delay occurs for 14 days while posting occurs (ii) at the completion of the notice period the adjudicator goes back into the field to conduct the ocular inspection.

In the interests of streamlining procedures, the prototype is seeking to have all field processes completed at one time before referring the file to CENRO for processing. This will permit the interview and acceptance of the evidence, the posting and the ocular inspection to be completed before the file is referred to CENRO for review of the application.)

- g. **CENRO are permitted to utilize contract processors.** (The existing process is undertaken by government staff within CENRO who have a level of expertise in this area. However, when the project expands this will provide a bottleneck that may limit production. It is recommended that CENRO be empowered to recruit and train contract staff to undertake the processing of claims. To ensure the greatest flexibility it would be beneficial if processing were to be undertaken in the field such as at the base camp.)
- h. **CENRO are permitted to utilize contract land inspectors.** (In CENRO Leyte there are six deputy land inspectors, so an expanded land titling programme will place a major burden on these staff. Therefore DENR Region 8 has approved the delegation of the powers of inspectors to contract adjudicators employed by LAMP. The aim of this amendment is to standardize this practice across the Philippines and to eliminate the need for each region to enter into special orders deputizing adjudicators. This will provide greater flexibility when DENR seeks to gear up the production processes in Phase II. The advantage of this approach is that mass land titling processes can be expanded more rapidly using contract staff, who will be trained by the same programme conducted by the Land Management Division. This will ensure that quality of outputs is maintained. The processing of applications by CENRO provides another safeguard. It is recommended that the regulations specifically permit the use of contract staff.)
- i. **Documents may be signed before officers such as the land management examiner, the land registration examiner, the records officer, the special investigator or engineer.** (This again is part of the strategy of having all processes undertaken in the field in order to simplify and expedite the handling of matters. The aim of this amendment is to apply Section 93 of the Public Land Act to systematic adjudication processes.)
- j. **Free patents may be issued up to 12 ha. in size.** (The Public Lands Act recognizes that free patents can be issued for land up to 12ha in area. However, Joint DAR-DENR Memorandum Circular No.14 of 1997 limits a free patent to 5ha, with DAR first covering the excess area and issuing a CLOA or Emancipation Patent as the case may be prior to the issue of the free patent. The issue of free patents up to 12ha would speed up the mass titling process. MARO has agreed and has confirmed that the titling process will in fact help its efforts at land redistribution. The existence of a title and a land survey will assist MARO in its recovery process. Registration of a title exceeding 5ha does not hinder MARO's work and it removes the potential for claimants to use the land titling process to avoid CARP obligations by subdividing the land before titles are issued.)
- k. **The ROD will accept free patents up to twelve (12) hectares** (The Leyte ROD presently refuses to register patents exceeding 5 hectares. RA 9176 was approved November 13, 2002 which already provides the 12 hectares maximum area. During Congressional hearings, this provision was discussed and proved to be justified. This joint circular, signed by the DOJ, will require all RODs to register patents exceeding 5 hectares.)
- l. **The approval of free patents is to be decentralized to the base camp.** (Pursuant to the most recent pronouncement on the subject, DENR AO 2002-20, free patents covering an area of not more than 5ha may be signed by PENRO, 5-10 hectares by the Regional Executive Director, and at and exceeding 10 hectares to be signed by the Secretary. Whilst

the need for checks and balances is understood, it is considered that setting up a mass titling programme will require a degree of flexibility in the process to sign the multiple titles likely to be issued under the programme. The purpose of this amendment is to provide that patents less than 5 hectares may be signed by the SAT leader, and patents exceeding 5 hectares may be signed by PENRO.)

- m. **The free patent is to issue without inquiry into the amount of land owned elsewhere by the applicant.** (Current practice is for CENRO, prior to issue of the free patent, to inquire as to the amount of land owned elsewhere by the applicant. This appears to be a time consuming and unproductive exercise which might be dispensed with. This will not prevent DAR from redistributing land in excess of the 12 hectare aggregate and the development of a data base by LAMP will simplify the process.)

- n. **A minimum fee of PhP 165 is to apply for the issue of Free Patents.** (Because of the initial start up costs associated with systematic rights registration it is not practical to attempt to recoup all of those costs. International experience through a number of projects has noted that cost recovery must be set at a low level to encourage persons to use the process. The gap between cost and recovery is effectively a government subsidy of the process. It is unlikely, however, that a project that is designed to help the poor can be sustainable without such a subsidy. The advantage of subsidizing of the process is that it makes the process of parcel-based rights registration viable. By charging a small fee to the applicant, however, there can be partial cost recovery. Notwithstanding the cost to the government in providing the subsidy, there are greater benefits seen for the future than the costs at present.

There are also advantages in setting a flat fee for certainty for the public and also administrative simplicity. The current fee comprises a cadastral fee at an average fee of approximately PhP 550, the patent application fee (PhP 50), ROD registration fee (PhP90) and contribution to the Assurance Fund that averages PhP19. The approximate fee is therefore PhP 719. The new fee of PhP 165 comprises the patent application fee (PhP 50), ROD registration fee (PhP90) and a PhP 25 fee in lieu of the contribution to the Assurance Fund. The cadastral fee is no longer to be charged as legal advice indicates that it is not lawful to do so for free patents. This fee is lower than the current fee being charged to applicants, thus making participation in the land titling process more attractive, is known to the applicant up front, and will dispense for the need for the ROD to acquire a tax declaration to prove the assessed value in order to calculate the contribution to the Assurance Fund.)

Alternatively abolish fees altogether for free patents, making them truly “free” patents. This will encourage greater participation in the free patent process, and will alleviate complaints that the free patents are not free. The loss of fees for the issue of free patents will be made up by the bringing of the land within the legal system which will facilitate the collection of land tax.

- o. **The fee for free patents may be paid at the time that the free patent is issued.** (The point in time at which fees must be paid is not clear. AO No. 2000 – 62 provided that no application shall be given due course unless all fees are paid. Previous guidelines had permitted payment to be postponed to the time of title issue if the applicant. However, AO No. 2000 – 67, which prescribed new procedures for processing applications is silent on this point. It would encourage landholders to participate and also ensure the proper collection of

fees if the fee was collected by CENRO at the time of title issue, rather than by the base camp at the time of initial processing.)

Alternatively, if fees are abolished, this clause is unnecessary.

- p. **Free Patents may issue without payment of outstanding taxes.** (DENR Memorandum Circular No.9 of May 5, 1993 and Joint DAR-DENR Memorandum Circular No.14 Series of 1997 both require that real estate taxes be paid as a condition precedent to the issue of a free patent. In Joint DENR-DAR Circular 2003-01 DENR once again provided that, before a patent can be issued, real estate taxes must be paid. It is evident from this explanation that the relevant agencies are unclear of the current law. While not entirely clear on this point, the law does not seem to support these Circulars. In fact S.115 of the Public Lands Act appears to suggest that there is no tax liability at the time of application. DOJ has recently advised that "The issuance and delivery of ordinary, cadastral or patent titles should under no circumstances be used as a means for enforcing the collection of land taxes" - see advising to the LAMP Task Force dated May 29, 2002. Also, LRA Memorandum Circular dated February 20, 1990 provides that Realty Tax Clearance need not be required in the initial registration of patent titles. The requirement operates as a disincentive to landholders to participate in the mass titling programme and should be withdrawn. This amendment seeks to confirm that real estate taxes need not be paid by a claimant before a free patent can be issued.)
- q. **No patent is to issue where the claim is disputed.** (The aim of this amendment is to provide that where a public objection or protest remains unresolved, the adjudication team shall not issue a patent).

2. **This Order shall take effect immediately.**

RESOURCES AND REFERENCES USED IN DRAFTING THE FREE PATENT AMENDMENT BILL, AUGUST 2004

1. Key Documents by Land Law Adviser (TA Report A9)
2. Mortgage Study Report
3. Review of Laws, Policies and Institutional Set-up on Tenancy in the Philippines
4. Factors for Participation of Land Claimants in the Land Titling Activities of PIO-1 (Final Report)
5. PIO 1 Lessons and Methodology Report
6. Opinion of Attorney Ramon Casanova dated 10 June 2004
7. Opinion of Attorney Ramon Casanova dated 21 July 2004
8. Explanatory Note by Attorney Ramon Casanova dated 3 May 2004
9. The Constitution of the Republic of the Philippines 1987
10. R.A No 730
11. P.D. No. 152
12. P.D. No.1529 (Property Registration Decree)
13. DANR Lands Administrative Order No. 27-73
14. R.A. No. 6516
15. R.A. No. 6940
16. R.A. No. 9176
17. C.A. No. 141
18. Act 2259 (The Cadastral Act)
19. R.A 6657
20. R.A. 8371
21. Joint DENR-DAR Circular 2003-01

**Stakeholder Review of Free Patent Amendments
LAMP OSS Conference Room
OSS Bldg., Candahug, Palo, Leyte
August 17, 2004**

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